

Remarks

Applicant elects claims 1 to 9 and 18 ("Group I"), directed to a composition comprising a polyphenol and a binder. Applicant wishes to reserve the right to request rejoinder of the Group II method claims following allowance of the Group I claims, since they are commensurate in scope with the Group I composition claims. Alternatively, or in addition, Applicant wishes to reserve the right to file a divisional application directed to deleted subject matter at a later date.

Election of Species

Applicant elects **with traverse** a) talcs and clays as the binding carrier ("Species a.") from claim 4, and b) shea butter as a plant oil or wax ("Species b.") from claim 18. Applicant submits that all of claims 1-28 are readable on elected "Species a." Claims 2-28 are readable on elected "Species b." Claim 2 recites an additional component of an anhydrous topical cream, gel or ointment, which can comprise a saturated or unsaturated plant oil or wax, such as shea butter. Applicant submits that the claims cover a generic invention and are allowable. As such, a search of the entire application would not constitute a serious burden on the Examiner, or any burden at all.

The present invention is based on the surprising finding that adsorption of the polyphenol to the adsorbent binding carrier results in improved stability of the composition as compared to prior polyphenol compositions. The inventors of the present application overcame the problem of uneven distribution of the polyphenol observed in prior polyphenol-containing compositions by adding the step of adsorbing the polyphenol to the binding carrier prior to admixture with the remaining components of the anhydrous composition. This adsorption of the polyphenol to the binding carrier facilitates even distribution of the polyphenol within the composition and improves the stability of the polyphenol. In contrast, prior art compositions were prepared using standard methods; that is, no steps were taken to adsorb the polyphenol to a binding carrier.

Binding agents, or binding carriers, in pharmaceutical formulations act to make the components of a formulation "stick together". This is not the same as adsorption. Rather, adsorption refers to the adhesion of a substance (in this case the polyphenol) to the surface of a second substance (in this case the binding carrier).

Thus, Applicant respectfully submits that adsorption of the polyphenol to the binding carrier is an inventive feature, and that selection of a particular binding carrier or plant oil/wax is merely preferred.

Support for Claim 1, as currently amended, is found, for example, on page 4, first full paragraph, lines 1-3 of the published PCT application.

Applicant submits that restricting the claims to a specific binding carrier and plant oil or wax would unduly limit the scope of protection sought. As mentioned throughout the Description, any of suitable binding carriers can be selected for use in the present invention, provided that the polyphenol is adsorbed to the binding carrier. Further, an anhydrous topical composition in accordance with the present invention can optionally comprise a cream, gel or ointment which can comprise a saturated or unsaturated plant oil or wax.

Applicants reserve the right to pursue prosecution of the non-elected inventions and/or species upon an indication of allowance of the generic claims or in a later filed application claiming the benefit of priority of the above-identified application.

In re Application of:
Buderer et al.
Application No.: 10/570,481
Filed: August 25, 2008
Page 7

PATENT
ATTY. DOCKET NO.: OSLER1140-1

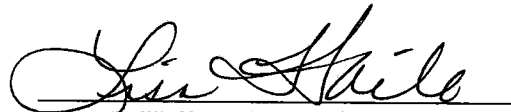
Conclusion

The Examiner is invited to contact Applicant's undersigned representative if there are any questions relating to this application.

The Commissioner is hereby authorized to charge \$130.00 as payment for the Petition for a One-Month Extension of Time to Deposit Account No. 07-1896. No other fee is believed due in connection with the filing of this paper. However, the Commissioner is hereby authorized to charge any other fees that may be due in connection with the filing of this paper, or credit any overpayment to Deposit Account No. 07-1896 referencing the above-identified Attorney Docket Number.

Respectfully submitted,

Date: November 4, 2010



Lisa A. Haile, J.D., Ph.D.
Registration No. 38,347
Telephone: (858) 677-1456
Facsimile: (858) 677-1465

DLA PIPER LLP (US)
4365 Executive Drive, Suite 1100
San Diego, California 92121-2133
USPTO CUSTOMER NO. 28213